REMARKS

The Examiner has indicated that the declaration under 37 CFR 1.131 is insufficient to overcome the rejections based on the Deri et al. and Conklin et al. references. In particular, the Examiner states that Exhibit A provides no description of "A method and system for receiving accounting information over a packet-switched network, monitoring at least one aspect of the received accounting information, and discarding at least a portion of the accounting information based on the monitored aspect."

Applicant respectfully disagrees with such assertion. In particular, applicant points out the following excerpt from page 2 of Exhibit A:

> "The Technical Detail
> Below is a list of techniques that we will patent as being used to identify attacks from accounting data. More can be added, of course, to make this as complete as possible and to prevent competition from suggesting a viable solution without infringing on our patent.
> • Detect port scan, either up or down. Be careful not to trigger a false alarm on OS-randomly-assigned source ports.
> • Detect IP scan.
> • Detect a surge in accounting traffic rate in ingress. In this case, count and discard records above a threshold. The attack is by the mere suggestion that this is not reflective of normal usage patterns."

Such excerpt clearly teaches "a method and system for receiving accounting information over a packet-switched network, monitoring at least one aspect of the received accounting information over a packet-switched network (i.e. "detect a surge in accounting traffic rate," etc.), and discarding at least a portion of the accounting information based on the monitored aspect (i.e. "count and discard records above a threshold," etc.) This is further supported by the declaration. Reconsideration is thus respectfully requested.

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The Examiner is thanked for the thorough work and attention to detail in the previous action.

The Examiner has further rejected Claims 1-4, 6-8, 10-17, and 20-22 under 35 U.S.C. 102(e) as being anticipated by Conklin et al. (USPN 5,991,881). Applicant respectfully disagrees with this assertion, especially in view of the amendments made hereinabove.

Specifically, the Examiner relies on the Abstract, Figs. 6-9, and Col. 1, line 10-Col. 2, line 4 to show applicant's claimed "discarding at least a portion of the accounting information that occurs during a surge in network traffic, based on the monitored aspect." The only explicit suggestion of any sort of "discarding," however, is found in col. 5, lines 22-24, as follows:

> "Intrusion Detection--Reportable Activity
>   If, there is no indication of an actual or potential intrusion,
> then the examined packet data is discarded."

Such excerpt, however, suggests the discarding of examined packet data, <u>if there is no indication of an actual or potential intrusion</u>. In sharp contrast, applicant teaches and claims "discarding at least a portion of the accounting information <u>that occurs during a surge in network traffic</u>" (emphasis added). Thus, applicant's claimed invention is adapted for discarding the actual accounting information <u>associated with a surge in traffic (i.e. attack, etc.)</u>, in contrast to discarding examined packet data <u>associated with a lack of an attack</u>, as suggested by Conklin. Thus, the intrusion detection technique Conklin *teaches away* from applicant's claimed invention. Only applicant's claimed invention prevents performance degradation of downstream applications during a possible attack by simply discarding accounting information associated with a surge in network traffic, as claimed.

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Simply nowhere in the prior art is there such a combination of features for fulfilling the foregoing objectives.

Claim 23 has been amended to include the aforementioned limitations of the remaining independent claims. Thus, all rejections of the independent claims are thus deemed to have been overcome. By virtue of the dependence of the remaining claims, such remaining claims are also deemed allowable.

A notice of allowance is respectfully requested.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is hereby authorized to charge any fees that may be due or credit any overpayment to Deposit Account No. 50-1351 (Order No. XACTP001).

Respectfully submitted,

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